

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK NC 27711

June 12, 1997

MEMORANDUM

SUBJECT: Response to Memo Regarding Clean Air Act (Act)  
Title III (Section 112)/Title/V Interface

FROM: Thomas C. Curran, Director  
Information Transfer and Program Integration  
Division, OAQPS (MD-12)

TO: Thomas J. Maslany, Director  
Air, Radiation and Toxics Division, Region III

This memorandum is in response to questions raised in your memo dated April 3, 1997 regarding the interface of Title III and Title V of the Act. In the above referenced memo, two issues/concerns were raised. You expressed concern that to the extent Section 112 establishes applicable requirements under Title V, EPA should be delegating those requirements to the States. In addition, a request was made for guidance concerning the effect of a Title V permit on the roles of States and EPA where a State has not requested delegation under section 112(1).

*Delegation of Section 112 requirements and Title V*

In general, the Office of Air Quality Planning and Standards (OAQPS) agrees with the position that EPA should delegate as much as reasonably allowable to the States. We have kept this thought foremost in our minds as we discuss the extent to which the decision making authorities in the Part 63 General Provisions are delegable to the States. We have attempted to clearly define applicable requirements in our MACT standards, as well as the Part 63 General Provisions. While there may be some uncertainty with respect to what should be delegated to States by the regions, we believe that MACT standards, which includes the Part 63 General Provisions, can be delegated to States except where specific limitations are contained in the regulations. An

example of a specific limitation is section 63.6(g), which requires the determination on alternative nonopacity emission limitations to be published in the Federal Register, an activity we cannot delegate to States.

In recent discussions, which include representatives from the Emission Standards Division (ESD), the Emissions Measurement and Analysis Division (EMAD), and the Information Transfer and Program Integration Division (ITPID), as well as representatives from the Office of Enforcement and Compliance Assurance (OECA), the Office of General Counsel (OGC), and the Regions, we have been discussing differences in the presumed delegation of General Provisions decision making authorities and the section 112(1) rule reinvention. After further discussions, we plan to issue more detailed guidance within the next month or so on which, if any, of the Administrator's discretionary authorities listed in the General Provisions should be retained by the EPA.

*Practical effects of a State issuing a Title V permit where delegation has not occurred*

Your memo identified several specific questions regarding the practical interface between delegation of Section 112 requirements under section 112(1), and compliance with Section 112 requirements under Title V. Please note below our response to your specific questions.

**1) Where a permit shield for the Section 112 applicable requirements is in place, are EPA's enforcement capabilities limited and, if so, how?**

No, EPA's enforcement capabilities are not limited under a permit shield but enforcement is shifted from focussing on violations of the applicable requirements to violations of the terms and conditions of the permit that implement those applicable requirements. Section 504(f) of the Act provides that compliance with the title V permit may be deemed to be compliance with the applicable requirements for which the shield is established. The part 70 rule limits any adverse effect on enforcement that permit shields may have by providing that permit shields may not apply to: applicable requirements promulgated after permit issuance, applicable requirements not addressed in the permit, permit revisions for which there is no EPA and public review, operational flexibility and "off-permit" changes or any other change not provided for in the permit, emergency orders under

section 303, violations existing at the time of permit issuance, or information requested under section 114 of the Act. To reduce the number of instances where permit shields might be established erroneously, the Act provides for EPA and public review of title V permits and allows EPA or the State to reopen and revise previously issued State permits when it comes to EPA's attention that a shield has been established erroneously.

**2) Delegation means that the State stands in for EPA as a matter of Federal law. Doesn't this presumptively occur after a permit is issued in the State, regardless of their delegations status?**

To some extent, a State with an approved Part 70 operating permit program "stands in for EPA" by assuring compliance with the Section 112 standards through the permit as required by Part 70. A State with delegated authority under Section 112(1), however, has somewhat different responsibilities. For example: (1) the State is required to implement and enforce the Section 112 standards regardless of whether the Part 70 permits have been issued; (2) the State could be delegated some of the Part 63 General Provisions decision making authorities; (3) as the primary implementer and enforcer of the Section 112 standards, the State may become the sole recipient of most reports from its sources, such as performance test results (the exact allocation of responsibilities for reviewing reports is left to the discretion of the Regions.)

A State with an approved Part 70 operating permit program, but without delegated authority under Section 112(1), is required to "assure compliance" with the section 112 standards through the permits. The Region is also obliged to enforce those standards, but is not limited to the permit terms and conditions. The Region has the same enforcement obligation whether or not the State has delegated authority under section 112(1). In addition, if there are requirements in the standard which are not permit terms and conditions, those are the responsibility of the Region to enforce.

**3) If primary implementation and enforcement of the MACT standards by the State occur through issuance of a Title V permit, what incentives exist for States to request delegation?**

Requesting delegation under Section 112(1) allows a State to minimize duplicative reporting requirements for its sources. In addition, if a State receives delegation, it can immediately

(depending upon its legal authority) begin to implement and enforce the section 112 standards and requirements prior to a permit being issued. This allows the States to have an early role in implementing and enforcing MACT standards. It also minimizes confusion for sources regarding where they should send reports. Requesting delegation is also beneficial for States seeking to substitute their alternative State rules and programs in place of the underlying Federal section 112 requirement.

We hope that this guidance is useful in clarifying your issues related to the interface between Section 112 requirements and Title V. This response has been coordinated with the ESD, OGC, and OECA. If you have further questions or comments on these topics, please contact Kathy Kaufman at 919-541-0102 or Sheila Milliken at 919-541-2625 of my staff.

cc: Regional Air Division Directors, Regions I-X  
Regional Air Toxics Contacts, Regions I-X  
Regional Air Program Managers, Regions I-X  
Karen Blanchard (MD-12)  
Patrick Chang(2344)  
Fred Dimmick (MD-13)  
Charlie Garlow (2242A)  
Steve Hitte (MD-12)  
Bruce Jordan (MD-13)  
Kathy Kaufman (MD-12)  
Sheila Milliken (MD-12)